

Information Sheet: Restorative Board of Inquiry

Last Revised August 2016

The Commission's restorative approach reflects the following principles, which are carefully and constantly considered throughout the process.

❖ Restorative Principles

The restorative approach recognizes that relationships are central to who we are and how we interact. A common source of conflict is the breakdown of relationships. In order to understand and respond appropriately to the cause, context and implications of conflict, restorative processes take a holistic and comprehensive approach to address harm. Through dialogue, participants aim to build or transform relationships by sharing experiences, information and ideas while building a broader understanding of the harms arising from the complaint. Dialogue and decision-making throughout the process must be open, transparent and inclusive. The parties commit to collaborate on repairing harm while transforming relationships in a forward focused and non-blaming manner.

The restorative approach is flexible and responsive to context; therefore, the parties' needs and concerns are considered throughout. A restorative process fosters a consensus-led dialogue that encourages the parties to take ownership of the process, including how it will evolve in their particular circumstances. As a participatory approach, those who have direct knowledge of the harms and impacts are engaged in circle dialogue. Key stakeholders, including support people, may be engaged in this inclusive process to speak to harms that may have occurred on an interpersonal, group, community, system and/or institutional level.

❖ Restorative Dialogue

The restorative dialogue approach is an option if the parties would like the opportunity to come together to understand what happened and learn from each other's experiences without the Board Chair's assistance. The parties participate separately in circle dialogue with the Restorative Facilitator, which prepares them to come together to understand the harms and impacts resulting from the complaint. Typically, the parties collaborate to build a Restorative plan that addresses the harms and needs explored in circle dialogue. As a flexible process, the structure is informed and guided by the needs of the parties.

If the parties are able to resolve some but not all issues through building a Restorative plan, they may request the Board Chair's assistance to resolve any outstanding issues through a Restorative Board of Inquiry. Any solutions included in a Restorative plan would remain in place while outstanding issues are adjudicated.

If the parties are unable to resolve any issues, they may request the Board Chair's assistance through a Restorative Board of Inquiry process.

❖ Restorative Board of Inquiry

Parties may choose to proceed to a Restorative Board of Inquiry, which may be co-facilitated by a Restorative Facilitator. The Board Chair adjudicates the issues and determines whether discrimination has occurred. The Board Chair will, however, offer the parties an opportunity to collaborate on solutions before rendering a decision.

The Board Chair leads the questioning of participants (or witnesses) rather than the parties or their lawyers. Participants and witnesses provide answers within the same dialogue. The process is structured to encourage truthful sharing of information. This unimpeded flow of dialogue enhances the ability of participants to meaningfully share what happened, how they were impacted, and what they need to move forward. Greater insight increases the parties' understanding of the harms and impacts of others.

❖ *Circle Format*

The participants, including the Board Chair, Restorative Facilitator, parties, lawyers, and any witnesses or experts are placed in a circle. The general order of seating places the complainant(s) to the left of the Board Chair and the Restorative Facilitator, with any supporting participants of the complainant(s), followed by the respondent(s) and any supporting participants. This order allows the complainant(s) and support people to speak first. Experts will be placed based on the information they may share. The public is seated around the periphery of the circle. The court reporter asks the parties to swear or affirm an oath to tell the truth and records the entire proceeding.

A circle format allows the orderly collection of information. Participants speak one after the other and are able to build on what was said before or articulate their understanding, if different. A circle discourages the physical creation of "sides" and is conducive to everyone being able to see each other. This creates a sense of equality and inclusion among participants and enhances the feeling of openness when sharing information.

While this is a restorative hearing there are some traditional court rules that still apply, such as exclusion of witnesses.

❖ *The Talking Piece*

A talking piece is used to help regulate the dialogue. It symbolizes that the person holding it may speak without interruption. The talking piece is passed around the circle clockwise providing everyone an equal opportunity to speak and be heard. If a participant has nothing to add to a particular question, they may pass the talking piece. The talking piece will go around the circle until it is evident to the co-facilitators that no one has anything more to add.

❖ *Restorative Questions*

The Facilitator opens the circle and provides an overview of the principles and circle guidelines for the dialogue. An introductory circle round provides everyone an opportunity to introduce themselves on the record. The Board Chair then asks the parties a broad question such as, "*what happened?*" The talking piece is then passed around the circle and each participant shares their

understanding and experience. Lawyers and other participants will pass the talking piece if they have no direct knowledge of what happened. The talking piece may be sent around the circle more than once per question, as the participants have an opportunity to comment on the information shared by others.

The Board Chair will then ask the parties, “*how were you impacted by what happened?*” Again, the talking piece will be passed around the circle, often more than once. After gaining a general overview of what happened and how the participants were affected, the Board Chair may ask more specific questions of particular participants to clarify the information shared.

❖ ***Break***

Typically, a break in the hearing will be held to allow the participants to discuss whether there are additional questions that need to be asked by the Board Chair. If so, the hearing reconvenes and the Board Chair asks questions he or she thinks are appropriate.

Another topic that may be raised during the break is whether there is anyone else who needs to participate in the inquiry. If so, the inquiry is adjourned.

❖ ***Consent Resolution***

After the questioning is finished, the Board Chair will ask the parties if they would like an opportunity to collaborate on a resolution prior to the Board Chair making a determination. The resolution must be consolidated as a Restorative agreement. Any unresolved issues will be adjudicated by the Board Chair. The Board Chair may retain jurisdiction to oversee implementation of the Restorative agreement.

❖ ***Determination under the Act***

The Board Chair concludes the circle by asking participants if they have any final comments. The Board Chair typically renders an oral decision followed by consideration of remedy, and a written decision within 6 months.

❖ ***Remedy***

If discrimination is found, the Board Chair holds a restorative hearing on remedy. The Restorative Facilitator will open the circle, as described above, and the Board Chair will ask a question, such as “*what do you need to move forward?*” The talking piece will go around the circle providing all participants the opportunity to comment on their needs. Typically, only those directly involved in the conflict share their needs.

The Board Chair will then ask, “*how can your needs be addressed?*” Again, the talking piece will go around the circle providing all participants the opportunity to speak.

❖ ***Consent Resolution***

After everyone has the opportunity to comment on remedy, the Board Chair will offer the parties an opportunity to resolve the issue of remedy before it is ordered. Any areas of agreement should be consolidated in a Restorative agreement with any outstanding issues to be remedied by the Board Chair.

❖ *Determination under the Act*

The Board Chair concludes the circle by asking participants if they have any final comments. The Board Chair typically renders an oral decision followed by a written decision.

❖ *Written Decision*

After the remedy is established consensually or ordered orally by the Board Chair, they will conclude the inquiry and render a written decision within 6 months. The decision will address the harms that are contraventions of the Act, the circumstances that contributed to these harms, solutions to prevent the harms from happening again, remedy to repair harms, and who is responsible for both the harms and implementation of the solutions. The written decision will be posted on the website of the Nova Scotia Human Rights Commission and the Canadian Legal Information Institute website. Upon posting, the general public, including media, will be notified of the decision via a press release issued by the Commission.

❖ *Public Inquiries*

Restorative Boards of Inquiry are public hearings. The general public, including media, will be notified of the date, time and location of the Restorative Board of Inquiry. The public is not, however, notified of restorative dialogue circles, unless the Board Chair's assistance is requested and a restorative hearing is convened. If the restorative dialogue process results in a Restorative plan, the plan will be made public by being posted on the Nova Scotia Human Rights Commission website.